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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Pearl Milbrandt,

10 Plaintiff,

11 v.

12 Cody N Crosier and Sun West Mortgage
13 Company Incorporated,

14 Defendants.

No. CV-24-01583-PHX-KML

ORDER

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16 Plaintiff Pearl Milbrandt filed suit against Defendants Cody N. Crosier and Sun
17 West Mortgage Company Inc. alleging violations of the Fair Debt Collections Practices
18 Act, criminally extortionate debt collection, and failure to make required financial
19 disclosures. Milbrandt was granted leave to proceed without prepayment of fees but upon
20 further review the complaint will be dismissed with leave to amend. Milbrandt's motion to
21 stay will accordingly be denied.

22 **I. Background**

23 As best the court can understand, Milbrandt's complaint alleges she signed a loan
24 agreement with an unnamed bank to purchase a home.¹ (Doc. 1 at 4, 20.) "When a person
25 buys a home, he or she usually borrows money from a lending institution, such as a bank."
26 *Obduskey v. McCarthy & Holthus LLP*, 586 U.S. 466, 469 (2019). These loans generally

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28 ¹ Milbrandt variously describes this agreement as the "Loan Contract," "Financial Instrument," and "Promissory Note." (*See, e.g.*, Doc. 1 at 4, 21.) The court refers to this agreement as the "Loan Agreement."

1 require the homeowner to make monthly payments. *Id.* Milbrandt acknowledges that the
2 bank credited the loan amount “to an account for [her] use.” (Doc. 1 at 20.) But unlike a
3 standard loan arrangement, Milbrandt claims that by entering the contract, her signature
4 and social security number intrinsically generated value and “created new money that is
5 claimed by the bank.” (Doc. 1 at 6, 20-21.)

6 Because banks are not in the business of paying for individuals’ signatures and
7 social security numbers, Milbrandt was presumably expected to make payments in return
8 for receiving a loan. And indeed, she alleges that the bank “demand[ed] [her] payments,”
9 albeit “without just cause.” (Doc. 1 at 21.) It is unclear to what extent Milbrandt made
10 payments to the bank. At various points the complaint requests “the money [Milbrandt has]
11 paid towards [her] property” be returned to her, but elsewhere states that the property was
12 already “paid in full” by the Loan Agreement. (Doc. 1 at 4.) Milbrandt also acknowledges
13 that the Loan Agreement used to purchase her property is a “promise to pay.” (Doc. 1 at 6.)

14 Irrespective of this payment history, Milbrandt alleges that the bank illegally
15 “converted [the Loan Agreement] into a security through a trust or similar arrangement”
16 and sold the financial instrument to an unnamed third party. (Doc. 1 at 21.) Milbrandt does
17 not make clear the extent to which the financial instrument may have changed hands but
18 claims that Crosier—the “Trustee” of an unidentified entity—and Sun West later contacted
19 her in relation to the Loan Agreement. (Doc. 1 at 2, 4.) The content of those
20 communications is also unclear from the complaint, but Milbrandt claims that she informed
21 Crosier that her “house cannot be sold by anyone other than [her].” (Doc. 1 at 4.) She also
22 alleges that she informed Crosier and Sun West that her property was paid in full by the
23 Loan Agreement; demanded that they cease communicating with her and her family
24 members regarding the property; and requested that they provide “a [d]ebt validation” and
25 “[p]roof that a loan was given to [her] for the property.” (Doc. 1 at 4.)

26 As a result of these interactions, Milbrandt filed her complaint alleging that Crosier
27 and Sun West communicated with her in connection with a debt collection without her
28 consent; improperly communicated with unnamed persons to acquire her location

1 information; used false, deceptive, or misleading representations or means in connection
 2 with a debt collection; refused to provide a requested debt validation or the original Loan
 3 Agreement; improperly charged interest on the Loan Agreement; and attempted to collect
 4 extensions of credit by extortionate means in violation of 15 U.S.C. §§ 1692b, 1692c,
 5 1692e, 1692g, 1692l, 18 U.S.C. §§ 892, 894, and Federal Rule of Civil Procedure 37. (Doc.
 6 1 at 3–4, 6, 30.)

7 Approximately six weeks after filing her complaint, Milbrandt separately filed a
 8 motion to stay a “pending federal court case.” (Doc. 7 at 1.) Her motion attaches
 9 communications between her and Tiffany & Bosco, P.A., a law firm purporting to represent
 10 the current owner of the property following foreclosure. (Doc. 7 at 4.) It is unclear from
 11 the motion what Milbrandt is asking the court to stay. But based on her attached
 12 communications with Tiffany & Bosco, P.A., it appears Milbrandt is possibly asking to
 13 “stay” eviction proceedings that may not have started yet.

14 **II. Analysis**

15 **A. In Forma Pauperis and Dismissal Standard**

16 Milbrandt sought leave to proceed without prepaying fees or costs and the court
 17 granted her request. (Docs. 2, 5.) But when an individual proceeds without prepaying fees
 18 or costs, “the court shall dismiss the case at any time if the court determines that . . . the
 19 action . . . fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2).
 20 Under that standard, “a complaint must contain sufficient factual matter, accepted as true”
 21 and viewed in the light most favorable to the nonmoving party “to state a claim to relief
 22 that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
 23 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This does not require “detailed factual
 24 allegations,” but does require “more than an unadorned, the-defendant-unlawfully-harmed-
 25 me accusation.” *Id.* “Threadbare recitals of the elements of a cause of action, supported by
 26 mere conclusory statements, do not suffice.” *Id.*

27 **B. Complaint Does Not Allege Plausible Claims**

28 It is difficult to identify the factual or legal basis for Milbrandt’s claims. As a general

1 matter, however, it appears that Milbrandt is attempting to bring both criminal and civil
 2 claims against both defendants. Milbrandt is not entitled to pursue any criminal claims
 3 because the authority to initiate a criminal action under Title 18 rests exclusively with
 4 federal prosecutors and that title provides no basis for civil liability. *See Allen v. Gold*
 5 *Country Casino*, 464 F.3d 1044, 1048 (9th Cir. 2006). And the criminal statutes that
 6 Milbrandt references, 18 U.S.C. §§ 892 and 894, do not contain any provisions allowing a
 7 private citizen to file suit. *Id.* Accordingly, to the extent Milbrandt is making claims under
 8 criminal laws, those claims are dismissed with prejudice.

9 **1. FDCPA Claims**

10 Milbrandt brings a number of claims under the FDCPA, which regulates the conduct
 11 of “debt collector[s].” 15 U.S.C. §§ 1692b, 1692c, 1692e, 1692g, 1692i. A “debt collector”
 12 is “any person . . . in any business the principal purpose of which is the collection of any
 13 debts, or who regularly collects or attempts to collect, directly or indirectly, debts.”
 14 *Obduskey*, 586 U.S. at 468 (quoting 15 U.S.C. § 1692a(6)).

15 To pursue claims under the FDCPA, Milbrandt must allege sufficient facts showing
 16 the defendants qualify as “debt collectors.” But Milbrandt has not alleged any facts to show
 17 that debt collection is the “principal purpose” of Crosier or Sun West nor has she alleged
 18 facts to show defendants “regularly collect[] or attempt[] to collect” debts. Indeed, her only
 19 specific mention of Crosier is that Crosier “harassed” her, and of Sun West that it “refused
 20 to send [her] what [she’s] asked for” after she requested a “[d]ebt validation.” (Doc. 1 at
 21 4.) She alleges that unnamed debt collectors have “harass[ed]” her, “refused to show [her]
 22 their books of accounting or receipt for a check (loan),” and “extorted” her. (Doc. 1 at 4,
 23 6–7.) It is unclear whether these conclusory statements refer to Crosier and Sun West, and
 24 in any event they constitute “unadorned” statements insufficient to state a claim.
 25 Additionally, to the extent that Crosier and Sun West attempted to contact Milbrandt in
 26 relation to a non-judicial foreclosure, such actions “do not constitute debt collection
 27 activities within the meaning of the FDCPA.” *Cline v. Green Tree Servicing LLC*, 2015
 28 WL 12938979, at *4 (D. Ariz. Dec. 8, 2015).

1 Separately, Section 1692l of the FDCPA delineates the authority of the Federal
 2 Trade Commission to enforce the FDCPA and accordingly is inapplicable here.
 3 Milbrandt's claims under 15 U.S.C. §§ 1692b, 1692c, 1692e, and 1692g are therefore
 4 dismissed without prejudice, and her claim under 15 U.S.C. § 1692l is dismissed with
 5 prejudice.

6 **2. Federal Rule of Civil Procedure 37**

7 Milbrandt also argues that she is entitled to certain disclosures from Crosier and Sun
 8 West, including "[p]roof that a loan was given to [her] for the property." (Doc. 1 at 4.)
 9 Milbrandt cites Rule 37 in support of this assertion, but the Federal Rules of Civil
 10 Procedure do not themselves provide a standalone cause of action. Moreover, Rule 37
 11 allows parties to "move for an order compelling disclosure or discovery" but only after
 12 discovery has commenced, and Rule 26(d) prohibits a party from seeking discovery "from
 13 any source before the parties have conferred as required by Rule 26(f)." No defendant has
 14 appeared and the parties have not conducted their Rule 26(f) conference. Milbrandt's
 15 invocation of Rule 37 is therefore also premature.

16 **3. Limited Leave to Amend**

17 Milbrandt will be granted limited leave to amend. An amended complaint must be
 18 retyped in its entirety and may not incorporate any part of the original complaint by
 19 reference. An amended complaint may not include any claims the court has dismissed with
 20 prejudice. Should she choose to file an amended complaint, Milbrandt must set forth in as
 21 much detail as possible the facts supporting the claims she wishes to assert against
 22 defendants. If Milbrandt files an amended complaint but that amended complaint still fails
 23 to state any claims for relief, the court may dismiss the amended complaint without further
 24 leave to amend.

25 **C. Motion to Stay**

26 Because Milbrandt's complaint is dismissed, her motion to stay is denied. If
 27 Milbrandt seeks to stay a pending eviction, she will need to request relief in the forum
 28 where the eviction is proceeding. This court does not have jurisdiction over eviction


1 proceedings of another court. *See United States v. Alpine Land & Reservoir Co.*, 174 F.3d
2 1007, 1013 (9th Cir. 1999).

3 Accordingly,

4 **IT IS ORDERED** the Motion to Stay (Doc. 7) is **DENIED**

5 **IT IS FURTHER ORDERED** the complaint (Doc. 1) is **DISMISSED WITH**
6 **LIMITED LEAVE TO AMEND** in compliance with this order. Plaintiff shall file her
7 amended complaint no later than **September 22, 2024**. The Clerk of Court is directed to
8 enter a judgment of dismissal without prejudice in the event no amended complaint is filed
9 by that date.

10 Dated this 23rd day of August, 2024.

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14 **Honorable Krissa M. Lanham**
15 **United States District Judge**
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